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82-582

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

BOB ASHMORE, T. M. SHEFFIELD, BRUCE LEE, BOBBY O. BLEVINS, HERMAN DANIELS, FLOYD GRAY and JIM FERRIS, *Petitioners*

vs.

TARRANT COUNTY and COMMISSIONERS' COURT OF TARRANT COUNTY, TEXAS
MIKE MONCRIEF, County Judge
R. T. "DICK" ANDERSEN, County Commissioner
R. L. "JERRY" MEBUS, County Commissioner
A. LYN GREGORY, County Commissioner
B. D. GRIFFIN, County Commissioner
Respondents

Petition for Writ of Certiorari to the Supreme Court of the State of Texas

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QUESTION RAISED

The Supreme Court of Texas erred in holding that the Petitioners did not have a property right protected by due process in the offices to which they were elected which was constitutionally protected under the Constitution of the State of Texas, Article I, Section 17, and the Fifth Amendment to the United States Constitution by way of the Fourteenth Amendment.

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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

BOB ASHMORE, T. M SHEFFIELD, BRUCE LEE, BOBBY O. BLEVINS, HERMAN DANIELS, FLOYD GRAY and JIM FERRIS, *Petitioners*

vs.

TARRANT COUNTY AND COMMISSIONERS' COURT OF TARRANT COUNTY, TEXAS, MIKE MONCRIEF, County Judge, R. T. "DICK" ANDERSEN, County Commissioner, R. L. "JERRY" MEBUS, County Commissioner, A. LYN GREGORY, County Commissioner, B. D. GRIFFIN, County Commissioner, *Respondents*

Petition for a Writ of Certiorari to the Supreme Court of the State of Texas

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Bob Ashmore, T. M. Sheffield, Bruce Lee, Bobby O. Blevins, Herman Da[illegible]ls, Floyd Gray, Jim Ferris, the Petitioners herein, pray that a writ of certiorari issue to review the opinions of the Supreme Court of Texas entered in the above-entitled case on the 23rd day of June, 1982, and the Motion for Rehearing which was overruled on the 21st day of July, 1982.

OPINIONS BELOW

The opinion of the Supreme Court of Texas is reported at 635 SW2d 417, and is printed in Appendix C hereto, infra pages A-23 - A-35. The opinion of the Court of Civil Appeals of the State of Texas is reported at 624 SW2d 740, and is printed in Appendix B, pages A-14 - A-22. The judgment of the trial court is unreported. A copy of the trial court Judgment may be found in Appendix A, pages A-1 - A-13.

JURISDICTION

The opinion of the Supreme Court of Texas (Appendix C, infra pages A-23 - A-35) ws entered on the 23rd day of June, 1982. A timely motion for rehearing was denied on the 21st day of July, 1982. The jurisdiction of the Supreme Court is invoked under 28 USCS 1257(3).

QUESTION PRESENTED

Whether the County Commissioners' Court of Tarrant County, Texas could abolish the offices of the duly elected Justices of the Peace and Constables of said county without paying said officials the pay and benefits they would have received for their terms of office.

CONSTITUTIONAL PROVISIONS PRESENTED

This case involves the Fifth Amendment and the Fourteenth Amendment to the Constitution of the United States and in particular the following provisions:

Amendment 5

". . . nor be deprived of life, liberty, or property, without due process of law, nor shall private property be taken for public use, without just compensation."

Amendment 14

". . . No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE NATURE OF THE CASE

This is an action for damages and declaratory relief brought by persons who held the offices of Justice of the Peace or Constable in the Justice Precincts of Tarrant County, Texas, as the same existed prior to January 1, 1981. Named as Respondents were the Commissioners' Court of Tarrant County, the individual members of the Court and the County itself. Petitioners sought damages for loss of the salary and emoluments of their offices which were abolished by the Commissioners' Court.

The Petitioners filed their action in the trial court asserting that the actions of the Respondents were unconstitutional. The trial court held that each petitioner had a property right in his office and could not be deprived of that right without due process of law and just compensation.

The judgment of the trial court was affirmed in Cause No. 18555, in the Court of Appeals for the Second Supreme Judicial District of Texas. The Supreme Court of Texas reversed the lower court's decision holding that the petitioners did not have a property right in their elected offices, and then stated that the petitioners did have some financial interest or "property interest" that should be protected by a Court of Equity against interference with his possession and conduct of his office dur-

ing his incumbency therein. The Supreme Court then stated procedural due process had been given to the Petitioners, and the Supreme Court held that a "trial-type" adjudication of relevant facts was not necessary for due process in the case.

REASONS FOR GRANTING THE WRIT
ISSUE ONE

The Supreme Court of Texas erred in holding that the Petitioners did not have a property right protected by due process in the offices to which they were elected which was constitutionally protected under the Constitution of the State of Texas, Article I, Section 17, and the Fifth Amendment to the United States Constitution by way of the Fourteenth Amendment.

ARGUMENT AND AUTHORITIES

The Justice of the Peace Court is a constitutional court created by Article V, Section 1 of the Constitution of the State of Texas.

The following cases have held that an elected official holds a property right in his office: *Bastrop County v. Hearn*, 70 Tex. 563, 8 SW 302; *Flaton v. State*, 56 Tex. 93; *Honey v. Graham*, 39 Tex. 1; *Castleman v. Williams*, (Civ. App.) 263 SW 638, on former appeal 112 Tex. 193, 247 SW 263; *State v. Rigsby*, 17 Civ. App. 171, 43 SW 1101; *Grayson County v. May*, 4 Will. Civ. Cas. App. Section 310 19 SW 331; *State v. Owens* 63 Tex. 261, on subsequent appeal 64 Tex. 500; and *McGuire v. Hughes* (CA) 452 SW2d 29.

The Supreme Court of Texas in its decision in this case stated "we acknowledge that an officer's interest in his elected position, though not 'property' in the conven-

tional, is a recognizable interest for purposes of procedural due process analysis."

Due process of law under the Fourteenth Amendment to the United States Constitution requires an opportunity to be heard at a meaningful time and in a meaningful manner. *Barry v. Barchi* (1979 U.S.) 61 L Ed 2d 365, 99 S. Ct. 2642. The fundamental procedural due process right to a hearing is generally found to embrace the right to present evidence and to confront and cross-examine adverse witnesses. *Morgan v. United States* 304 U.S. 1, 18; and *Green v. McElroy*, 360 U.S. 474, 497 (1959). The right to be heard also means the right to be heard by an impartial decision maker. *Arnett v. Kennedy*, 416 U.S. 134, 197 (1974). *Tunney v. Ohio*, 237 U.S. 510 (1927); *Ward v. Village of Monroeville*, 409 U.S. 57 (1972); *Gibson v. Berryhill*, 411 U.S. 564, 579 (1973).

CONCLUSION

Wherefore, Petitioners respectfully pray that a writ of certiorari issue from this Honorable Court to review the judgment of the Supreme Court of Texas in Cause No. C-985, Tarrant County, et al. v. Bob Ashmore, et al. In the event that the Petition is granted, Petitioners pray that the judgment of the Court below be reversed, and for such other relief as the Court may deem necessary.

Respectfully submitted,

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By: _____
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_____
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State Bar No. 01867000

Attorneys for Petitioners

CERTIFICATE OF SERVICE

I, Jim Claunch, hereby certify that three true and correct copies of the foregoing Petition for Writ of Certiorari To the Supreme Court of the State of Texas were mailed to the attorney of record for Respondents, Mr. Frederick M. Schattman, Assistant District Attorney, at 200 West Belknap Street, Fort Worth, Texas 76102, by certified mail, return receipt requested, this the 30 day of September, 1982.

Jim Claunch

JIM CLAUNCH

APPENDIX "A"

No. 67-64363-80

BOB ASHMORE, ET AL

vs.

TARRANT COUNTY, TEXAS, ET AL

In the District Court of Tarrant County, Texas
67th Judicial District

JUDGMENT

Came on to be heard on the 30th day of December, 1980, the above styled and numbered cause wherein Plaintiffs Bob Ashmore, T. M. Sheffield, Bobby O. Blevins and Bruce Lee having filed their application for temporary and permanent injunction against Defendants Tarrant County, Texas, and the Commissioner's Court of Tarrant County, Texas, comprised of Mike Moncrief, County Judge; Richard T. Andersen, Commissioner of Precinct 1; Jerry Mebus, Commissioner of Precinct 2; A. Lyn Gregory, Commissioner of Precinct 3; and B. D. Griffin, Commissioner of Precinct 4 as Defendants requesting the Court to enjoin said Defendants from abolishing the existing Justice Precinct of all Justices of the Peace effective January 1, 1981, and for damages in the sums of their salaries and all other benefits of the offices to which they were elected for the remainder of their elected terms. The Court by order of December 19, 1980, joined as involuntary plaintiffs Morris Howeth, Chico Perez, John Forbes, Robert Craig, Jim Ferris, C. Doyle Lee, Walter Stank, Paul Meador, Jim Patty, Herman Daniel, Eldon Sheffield, Floyd Gray, Richard Craig, and Charles Gorman. Involuntary Plaintiffs Floyd

Gray, Robert Craig and Jim Ferris entered their appearance by and through their respective attorneys of record. Involuntary Plaintiffs Morris Howeth, Chico Perez, John Forbes, C. Doyle Lee, Walter Stank, Paul Meador, Jim Patty, Herman Daniel, Eldon Sheffield, Richard Craig and Charles Gorman entered their appearance by signing a waiver of service of citation. The Court further finds that the Texas Attorney General was served with said application and declined to participate in the cause of action.

By agreement of the parties, a hearing was begun on December 30, 1980, on the merits of the case and concluded on December 31, 1980. All Plaintiffs and Defendants who were represented by attorneys appeared in person and by their attorney of record, and the Involuntary Plaintiffs who were without attorneys had entered their appearance by executing waivers of service of citation. The Court after considering the pleadings, hearing the evidence and argument of counsel finds that all parties are properly before the Court and that the Court has jurisdiction over the parties and the subject matter.

The Court finds that Bob Ashmore is the present Justice of the Peace in and for Precinct 1, Place 2, Tarrant County, Texas, having been re-elected to a four year term beginning January 1, 1979, and ending December 31, 1982. T. M. Sheffield is the present Justice of the Peace in and for Justice Precinct 6, Tarrant County, Texas, having been re-elected to a four year term beginning January 1, 1979, and ending December 31, 1982. Bobby O. Blevins is the present Justice of the Peace in and for Justice Precinct 4, Tarrant County, Texas, having been re-elected to a four year term beginning January 1, 1979, and ending December 31, 1982. Plaintiff Bruce Lee is the

present Constable in and for Justice Precinct 4, Tarrant County, Texas, having been elected to a four year term beginning January 1, 1977, and ending December 31, 1980, and re-elected for a four year term beginning January 1, 1981, and ending December 31, 1984. Floyd Gray is the present Justice of the Peace in and for Justice Precinct 3, Place 2, Tarrant County, Texas, having been re-elected to a four year term beginning January 1, 1979, and ending December 31, 1982. Robert Craig has been elected as Constable of Precinct 2, Tarrant County, Texas, for a four year term beginning January 1, 1981, and ending December 31, 1984. Jim Ferris has been elected as Constable of Precinct 3, Tarrant County, Texas, for a four year term beginning January 1, 1981, and ending December 31, 1984. John Forbes is the present Justice of the Peace in and for Justice Precinct 2, Tarrant County, Texas, having been elected to a four year term beginning January 1, 1979, and ending December 31, 1982. Walter Stank is the present Justice of the Peace in and for Justice Precinct 5, Tarrant County, Texas, having been elected to a four year term beginning January 1, 1979, and ending December 31, 1982. Eldon Sheffield is the present Justice of the Peace in and for Justice Precinct 7, Tarrant County, Texas, having been elected to a four year term beginning January 1, 1979, and ending December 31, 1982. Richard Craig is the present Justice of the Peace in and for Justice Precinct 8, Tarrant County, Texas, having been elected to a four year term beginning January 1, 1979, and ending December 31, 1982. Morris Howeth is the present Justice of the Peace in and for Justice Precinct 1, Place 2, Tarrant County, Texas, having been re-elected to a four year term beginning January 1, 1981, and ending December 31, 1984. C. Doyle Lee is the present Justice of the Peace in and for Justice Precinct 3, Place 1, Tarrant County,

Texas, having been re-elected to a four year term beginning January 1, 1981, and ending December 31, 1984. Chico Perez is the present Constable in and for Justice Precinct 1, Tarrant County, Texas, having been re-elected on November 4, 1980, for a four year term beginning January 1, 1981, and ending December 31, 1984. Paul Meador is the present Constable in and for Justice Precinct 5, Tarrant County, Texas having been re-elected on November 4, 1980, for a four year term beginning January 1, 1981, and ending December 31, 1984. Jim Patty is the present Constable in and for Justice Precinct 7, Tarrant County, Texas, having been re-elected on November 4, 1980, for a four year term beginning January 1, 1981, and ending December 31, 1984. Herman Daniel is the present Constable in and for Justice Precinct 6, Tarrant County, Texas, having been re-elected on November 4, 1980, for a four year term beginning January 1, 1981, and ending December 31, 1984. Charles Gorman is the present Constable in and for Justice Precinct 8, Tarrant County, Texas, having been elected on November 4, 1980, for a four year term beginning January 1, 1981, and ending December 31, 1984.

The Court further finds that Article 2351-1/2 Revised Civil Statutes of Texas is constitutional and that the Commissioner's Court of Tarrant County, Texas, has the power to redistrict and declare offices of Justices of the Peace and Constables vacant and the power to appoint and fill those vacancies. The Court further finds that those Justices of the Peace and Constables who are serving a four year term expiring December 31, 1982, having a property right in such offices and cannot be deprived of such right without due process of law and just compensation for the deprivation of their property right. The Court further finds that the Justices of the Peace and

Constables whose terms expire December 31, 1982, have been deprived of due process of law by the Tarrant County Commissioner's Court. The Court further finds that such Justices of the Peace and Constables are entitled to full salary and benefits including any future cost of living increases afforded other County officeholders during the remaining two years of their office tenure.

IT IS THEREFORE THE ORDER AND DECREE of this Court that Tarrant County, Texas, is hereby Ordered to pay BOB ASHMORE his full salary and benefits including future cost of living increases afforded other County officeholders during the remaining two years of his term of office. It is further ORDERED that if BOB ASHMORE is re-appointed to this or a similar office and declines to serve, he waives his property rights as set forth above. It is further ORDERED that if BOB ASHMORE accepts re-appointment to the same or a similar office with salary and benefits less than he currently earns, it is then Ordered that Tarrant County, Texas, shall pay BOB ASHMORE the difference in salary and benefits between his present earnings and the emoluments of the office to which he accepted appointment.

IT IS FURTHER THE ORDER AND DECREE of this Court that Tarrant County, Texas, is hereby Ordered to pay T. M. SHEFFIELD his full salary and benefits including future cost of living increases afforded other County officeholders during the remaining two years of his term of office. It is further ORDERED that if T. M. SHEFFIELD is re-appointed to this or a similar office and declines to serve, he waives his property rights as set forth above. It is further ORDERED that if T. M. SHEFFIELD accepts re-appointment to the same or a similar office with salary and benefits less than he cur-

rently earns, it is then Ordered that Tarrant County, Texas, shall pay T. M. SHEFFIELD the difference in salary and benefits between his present earnings and the emoluments of the office to which he accepted appointment.

IT IS FURTHER THE ORDER AND DECREE of this Court that Tarrant County, Texas, is hereby Ordered to pay BOBBY O. BLEVINS his full salary and benefits including future cost of living increases afforded other County officeholders during the remaining two years of his term of office. It is further ORDERED that if BOBBY O. BLEVINS is re-appointed to this or a similar office and declines to serve, he waives his property rights as set forth above. It is further ORDERED that if BOBBY O. BLEVINS accepts re-appointment to the same or a similar office with salary and benefits less than he currently earns, it is then Ordered that Tarrant County, Texas, shall pay BOBBY O. BLEVINS the difference in salary and benefits between his present earnings and the emoluments of the office to which he accepted appointment.

IT IS FURTHER THE ORDER AND DECREE of this Court that Tarrant County, Texas, is hereby Ordered to pay JOHN FORBES his full salary and benefits including future cost of living increases afforded other County officeholders during the remaining two years of his term of office. It is further ORDERED that if JOHN FORBES is re-appointed to this or a similar office and declines to serve, he waives his property rights as set forth above. It is further ORDERED that if JOHN FORBES accepts re-appointment to the same or a similar office with salary and benefits less than he currently earns, it is then Ordered that Tarrant County, Texas, shall pay JOHN FORBES the difference in salary and

benefits between his present earnings and the emoluments of the office to which he accepted appointment.

IT IS FURTHER THE ORDER AND DECREE of this Court that Tarrant County, Texas, is hereby Ordered to pay WALTER STANK his full salary and benefits including future cost of living increases afforded other County officeholders during the remaining two years of his term of office. It is further ORDERED that if WALTER STANK is re-appointed to this or a similar office and declines to serve, he waives his property rights as set forth above. It is further ORDERED that if WALTER STANK accepts re-appointment to the same or a similar office with salary and benefits less than he currently earns, it is then Ordered that Tarrant County, Texas, shall pay WALTER STANK the difference in salary and benefits between his present earnings and the emoluments of the office to which he accepted appointment.

IT IS FURTHER THE ORDER AND DECREE of this Court that Tarrant County, Texas, is hereby Ordered to pay ELDON SHEFFIELD his full salary and benefits including future cost of living increases afforded other County officeholders during the remaining two years of his term of office. It is further ORDERED that if ELDON SHEFFIELD is re-appointed to this or a similar office and declines to serve, he waives his property rights as set forth above. It is further ORDERED that if ELDON SHEFFIELD accepts re-appointment to the same or a similar office with salary and benefits less than he currently earns, it is then Ordered that Tarrant County, Texas, shall pay ELDON SHEFFIELD the difference in salary and benefits between his present earnings and the emoluments of the office to which he accepted appointment.

IT IS FURTHER THE ORDER AND DECREE of this Court that Tarrant County, Texas, is hereby Ordered to pay FLOYD GRAY his full salary and benefits including future cost of living increases afforded other County officeholders during the remaining two years of his term of office. It is further ORDERED that if FLOYD GRAY is re-appointed to this or a similar office and declines to serve, he waives his property rights as set forth above. It is further ORDERED that if FLOYD GRAY accepts re-appointment to the same or a similar office with salary and benefits less than he currently earns, it is then Ordered that Tarrant County, Texas, shall pay FLOYD GRAY the difference in salary and benefits between his present earnings and the emoluments of the office to which he accepted appointment.

IT IS FURTHER THE ORDER AND DECREE of this Court that Tarrant County, Texas, is hereby Ordered to pay RICHARD CRAIG his full salary and benefits including future cost of living increases afforded other County officeholders during the remaining two years of his term of office. It is further ORDERED that if RICHARD CRAIG is re-appointed to this or a similar office and declines to serve, he waives his property rights as set forth above. It is further ORDERED that if RICHARD CRAIG accepts re-appointment to the same or a similar office with salary and benefits less than he currently earns, it is then Ordered that Tarrant County, Texas, shall pay RICHARD CRAIG the difference in salary and benefits between his present earnings and the emoluments of the office to which he accepted appointment.

The Court further finds that those Justices of the Peace and Constables who have been elected to begin a four year term beginning January 1, 1981, and ending

December 31, 1984, have a property right in such offices and cannot be deprived of such right without due process of law and compensation of property taken. The Court further finds that the Justices of the Peace and Constables who have been elected and whose terms begin January 1, 1981, and expire December 31, 1984, have been deprived of due process of law by the Tarrant County Commissioner's Court. The Court further finds that such Justices of the Peace and Constables are entitled to full salary and benefits including any future cost of living increases afforded other County officeholders for the four year term to which they have been elected.

IT IS THEREFORE THE ORDER AND DECREE of this Court that Tarrant County, Texas, is hereby ORDERED to pay BRUCE LEE his full salary and benefits including future cost of living increases afforded other County officeholders for the four years to which he was elected to office. It is further ORDERED that if BRUCE LEE is appointed to this or a similar office and declines to serve, he waives his property rights as set forth above. It is further ORDERED that if BRUCE LEE accepts appointment to the same or a similar office with salary and benefits less than the current salary of the office to which he was elected, it is then Ordered that Tarrant County, Texas, shall pay BRUCE LEE the difference in salary and benefits between his present salary and the emoluments of the office to which he accepts appointment. It is further ORDERED that if BRUCE LEE runs for re-election in 1982, and is defeated, Tarrant County, Texas, is hereby Ordered to pay BRUCE LEE his full salary and benefits and emoluments of office for the remaining two years of the original four year term to which he was elected.

IT IS THEREFORE THE ORDER AND DECREE of this Court that Tarrant County, Texas, is hereby ORDERED to pay CHICO PEREZ his full salary and benefits including future cost of living increases afforded other County officeholders for the four years to which he was elected to office. It is further ORDERED that if CHICO PEREZ is appointed to this or a similar office and declines to serve, he waives his property rights as set forth above. It is further ORDERED that if CHICO PEREZ accepts appointment to the same or a similar office with salary and benefits less than the current salary of the office to which he was elected, it is then Ordered that Tarrant County, Texas, shall pay CHICO PEREZ the difference in salary and benefits between his present salary and the emoluments of the office to which he accepts appointment. It is further ORDERED that if CHICO PEREZ runs for re-election in 1982, and is defeated, Tarrant County, Texas, is hereby Ordered to pay CHICO PEREZ his full salary and benefits and emoluments of office for the remaining two years of the original four year term to which he was elected.

IT IS THEREFORE THE ORDER AND DECREE of this Court that Tarrant County, Texas, is hereby ORDERED to pay ROBERT CRAIG his full salary and benefits including future cost of living increases afforded other County officeholders for the four years to which he was elected to office. It is further ORDERED that if ROBERT CRAIG is appointed to this or a similar office and declines to serve, he waives his property rights as set forth above. It is further ORDERED that if ROBERT CRAIG accepts appointment to the same or a similar office with salary and benefits less than the current salary of the office to which he was elected, it is then Ordered that Tarrant County, Texas, shall pay ROBERT

CRAIG the difference in salary and benefits between his present salary and the emoluments of the office to which he accepts appointment. It is further ORDERED that if ROBERT CRAIG runs for re-election in 1982, and is defeated, Tarrant County, Texas, is hereby Ordered to pay ROBERT CRAIG his full salary and benefits and emoluments of office for the remaining two years of the original four year term to which he was elected.

IT IS THEREFORE THE ORDER AND DECREE of this Court that Tarrant County, Texas, is hereby ORDERED to pay JIM FERRIS his full salary and benefits including future cost of living increases afforded other County officeholders for the four years to which he was elected to office. It is further ORDERED that if JIM FERRIS is appointed to this or a similar office and declines to serve, he waives his property rights as set forth above. It is further ORDERED that if JIM FERRIS accepts appointment to the same or a similar office with salary and benefits less than the current salary of the office to which he was elected, it is then Ordered that Tarrant County, Texas, shall pay JIM FERRIS the difference in salary and benefits between his present salary and th[illegible]noluments of the office to which he accepts appointment. It is further ORDERED that if JIM FERRIS runs for re-election in 1982, and is defeated, Tarrant County, Texas, is hereby Ordered to pay JIM FERRIS his full salary and benefits and emoluments of office for the remaining two years of the original four year term to which he was elected.

IT IS THEREFORE THE ORDER AND DECREE of this Court that Tarrant County, Texas, is hereby ORDERED to pay PAUL MEADOR his full salary and benefits including future cost of living increases afforded other County officeholders for the four years to which he

was elected to office. It is further ORDERED that if PAUL MEADOR is appointed to this or a similar office and declines to serve, he waives his property rights as set forth above. It is further ORDERED that if PAUL MEADOR accepts appointment to the same or a similar office with salary and benefits less than the current salary of the office to which he was elected, it is then Ordered that Tarrant County, Texas, shall pay PAUL MEADOR the difference in salary and benefits between his present salary and the emoluments of the office to which he accepts appointment. It is further ORDERED that if PAUL MEADOR runs for re-election in 1982, and is defeated, Tarrant County, Texas, is hereby Ordered to pay PAUL MEADOR his full salary and benefits and emoluments of office for the remaining two years of the original four year term to which he was elected.

IT IS THEREFORE THE ORDER AND DECREE of this Court that Tarrant County, Texas, is hereby ORDERED to pay JIM PATTY his full salary and benefits including future cost of living increases afforded other County officeholders for the four years to which he was elected to office. It is further ORDERED that if JIM PATTY is appointed to this or a similar office and declines to serve, he waives his property rights as set forth above. It is further ORDERED that if JIM PATTY accepts appointment to the same or a similar office with salary and benefits less than the current salary of the office to which he was elected, it is then Ordered that Tarrant County, Texas, shall pay JIM PATTY the difference in salary and benefits between his present salary and the emoluments of the office to which he accepts appointment. It is further ORDERED that if JIM PATTY runs for re-election in 1982, and is defeated, Tarrant County, Texas, is hereby Ordered to pay JIM

PATTY his full salary and benefits and emoluments of office for the remaining two years of the original four year term to which he was elected.

IT IS THEREFORE THE ORDER AND DECREE of this Court that Tarrant County, Texas, is hereby ORDERED to pay HERMAN DANIEL his full salary and benefits including future cost of living increases afforded other County officeholders for the four years to which he was elected to office. It is further ORDERED that if HERMAN DANIEL is appointed to this or a similar office and declines to serve, he waives his property rights as set forth above. It is further ORDERED that if HERMAN DANIEL accepts appointment to the same or a similar office with salary and benefits less than the current salary of the office to which he was elected, it is then Ordered that Tarrant County, Texas, shall pay HERMAN DANIEL the difference in salary and benefits between his present salary and the emoluments of the office to which he accepts appointment. It is further ORDERED that if HERMAN DANIEL runs for re-election in 1982, and is defeated, Tarrant County, Texas, is hereby Ordered to pay HERMAN DANIEL his full salary and benefits and emoluments of office for the remaining two years of the original four year term to which he was elected.

IT IS THEREFORE THE ORDER AND DECREE of this Court that Tarrant County, Texas, is hereby ORDERED to pay CHARLES GORMAN his full salary and benefits including future cost of living increases afforded other County officeholders for the four years to which he was elected to office. It is further ORDERED that if CHARLES GORMAN is appointed to this or a similar office and declines to serve, he waives his property rights as set forth above. It is further ORDERED

that if CHARLES GORMAN accepts appointment to the same or a similar office with salary and benefits less than the current salary of the office to which he was elected, it is then Ordered that Tarrant County, Texas, shall pay CHARLES GORMAN the difference in salary and benefits between his present salary and the emoluments of the office to which he accepts appointment. It is further ORDERED that if CHARLES GORMAN runs for re-election in 1982, and is defeated, Tarrant County, Texas, is hereby Ordered to pay CHARLES GORMAN his full salary and benefits and emoluments of office for the remaining two years of the original four year term to which he was elected.

IT IS THEREFORE THE ORDER AND DECREE of this Court that Tarrant County, Texas, is hereby ORDERED to pay MORRIS HOWETH his full salary and benefits including future cost of living increases afforded other County officeholders for the four years to which he was elected to office. It is further ORDERED that if MORRIS HOWETH is appointed to this or a similar office and declines to serve, he waives his property rights as set forth above. It is further ORDERED that if MORRIS HOWETH accepts appointment to the same or a similar office with salary and benefits less than the current salary of the office to which he was elected, it is then Ordered that Tarrant County, Texas, shall pay MORRIS HOWETH the difference in salary and benefits between his present salary and the emoluments of the office to which he accepts appointment. It is further ORDERED that if MORRIS HOWETH runs for re-election in 1982, and is defeated, Tarrant County, Texas, is hereby Ordered to pay MORRIS HOWETH his full salary and benefits and emoluments of office for the

remaining two years of the original four year term to which he was elected.

IT IS THEREFORE THE ORDER AND DECREE of this Court that Tarrant County, Texas, is hereby ORDERED to pay C. DOYLE LEE his full salary and benefits including future cost of living increases afforded other County officeholders for the four years to which he was elected to office. It is further ORDERED that if C. DOYLE LEE is appointed to this or a similar office and declines to serve, he waives his property rights as set forth above. It is further ORDERED that if C. DOYLE LEE accepts appointment to the same or a similar office with salary and benefits less than the current salary of the office to which he was elected, it is then Ordered that Tarrant County, Texas, shall pay C. DOYLE LEE the difference in salary and benefits between his present salary and the emoluments of the office to which he accepts appointment. It is further ORDERED that if C. DOYLE LEE runs for re-election in 1982, and is defeated, Tarrant County, Texas, is hereby Ordered to pay C. DOYLE LEE his full salary and benefits and emoluments of office for the remaining two years of the original four year term to which he was elected.

It is hereby ORDERED that the salary, benefits and emoluments heretofore ordered shall be paid in the same manner and at the same times that all other public officials of Tarrant County, Texas, are paid.

The Court further finds that all costs herein be assessed against the Defendants for which the Clerk may have their execution.

IT IS THEREFORE ORDERED that all costs herein are assessed against the Defendants for which the Clerk shall have their execution.

IT IS FURTHER ORDERED that all relief requested by any party not expressly granted herein is denied.

SIGNED this 9th day of January, 1981.

/s/ Arthur Tipps
Judge Presiding

APPENDIX "B"

No. 18555
IN THE COURT OF APPEALS FOR THE SECOND SUPREME JUDICIAL DISTRICT OF TEXAS

TARRANT COUNTY, TEXAS, ET AL., Appellants

vs.

BOB ASHMORE, ET AL., Appellees

From the District Court of Tarrant County

OPINION

This is an appeal from a judgment that (1) a redistricting plan ordered by the county commissioners court deprived incumbent justices of the peace and constables of their terms of office without due process of law; and (2) the dispossessed officeholders are entitled to receive salaries and benefits for the remainder of their original terms of office.

We affirm.

Appellees were Tarrant County justices of the peace and constables who had been duly elected and were serving terms of office ending on either December 31, 1982, or December 31, 1984.

Using the redistricting powers vested in them by TEX. CONST. art. 5 §18 (1971) and TEX. REV. CIV. STAT. ANN. art. 2351 1/2(c), the appellant commissioners court held hearings to redefine the precincts then being served by the appellees.

Following six public hearings, the commissioners court abolished the existing precincts and declared the appellees' offices vacant, effective January 1, 1981.

Appellees sued for a declaration as to whether the commissioners' action is valid; whether art. 2351 1/2(c) is constitutional; and for damages equal to the salaries and benefits of their respective offices for the remainder of their original terms.

The trial court judgment held art. 2351 1/2 to be constitutional and that the Tarrant County commissioners court has the power to redistrict and declare vacancies and to fill those vacancies.

The court also held that each appellee has a property right in his office and may not be deprived of that right without due process of law and just compensation. The county was ordered to pay salary, benefits and emoluments of office to each appellee for the unexpired portion of their respective terms.

Appellees present no cross-point now challenging the constitutionality of art. 2351 1/2, so we do not entertain that question. Acts of the legislature are presumed constitutional, and the courts will not anticipate a constitutional issue. *Bush v. State of Texas*, 372 U.S. 586, 83 S.Ct. 922, 9 L.Ed. 2d 958 (1963); *Vernon v. State*, 406 S.W.2d 236 (Tex. Civ. App. — Corpus Christi 1966, writ ref'd n.r.e.).

Both the appellants and appellees rely upon language in TEX. CONST. art. 5 §18. It states that an elected justice of the peace or constable "shall hold his office for four years and until his successor shall be elected and qualified."

The same section vests the commissioners court with authority to divide the county into precincts and to revise those precincts "from time to time, for the convenience of the people."

Once those revisions are made, they are governed by art. 2351 1/2(c), which states:

> "(c) When boundaries of justice of the peace precincts are changed, so that existing precincts are altered, new precincts are formed, or former precincts are abolished, if only one previously elected or appointed justice of the peace or constable resides within a precinct as so changed, he shall continue in office as justice or constable of that precinct for the remainder of the term to which he was elected or appointed. If more than one justice or constable resides within a precinct as so changed, or if none resides therein, the office shall become vacant and the vacancy shall be filled as other vacancies; provided, however, that in precincts having two justices, if two reside therein, both shall continue in office, and if more than two reside therein, both offices shall become vacant."

The appellees were evicted from office pursuant to art. 2351 1/2(c). Some were reappointed; some were not.

The appellees suit challenged the commissioners redistricting order denying appellees the right to complete their terms of office as being a deprivation of their property in violation of TEX. CONST. art. 1 §19, which provides:

> "No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land."

Our initial inquiry then is whether any constitutionally cognizable property interest is involved. *Ingraham v. Wright*, 430 U.S. 651, 97 S.Ct. 1401, 51 L.Ed 2d 711 (1977).

Public office in this state is property, and a duly elected incumbent has a vested right to the possession of the office and enjoyment of its rights and emoluments. Such rights are protected by the constitution and will be enforced by the courts. *Taylor v. Nealon*, 120 S.W.2d 586 (Tex. 1938); *McGuire v. Hughes*, 452 S.W.2d 29 (Tex. Civ. App. — Dallas 1970, no writ).

Appellants contend that their redistricting actions were accomplished in accord with due process. In their first point of error, appellants alternately assert that there was no evidence, and insufficient evidence, to support the court's finding that due process was denied..

Thus our next inquiry is to determine exactly what process is due under the facts of this case and whether the appellees were accorded less than the degree of procedural protection required. *Ingraham v. Wright, supra.*

The scope of due process was concisely reviewed in *Cantu v. Parr*, 338 S.W.2d 182 (Tex. Civ. App. — San Antonio 1960, writ dism'd w.o.j., 340 S.W.2d 481 Tex. 1960), at 185, 186:

> "Since the famous case of Trustees of Dartmouth College v. Woodward, 4 Wheat 518, 4 L.Ed. 629, it has generally been conceded that the due process of law is 'A law which hears before it condemns, which proceeds upon inquiry and renders judgment only afterwards.'
>
> "'Due process of law' is required by both our Federal and State Constitution. The fourteenth amend-

ment of our Federal Constitution provides, among other things, that:

> "'Nor shall any State deprive any person of life, liberty, or property, without due process of law.'
>
> "Texas Constitution, Art. 1, §19, Vernon's Ann. St. provides [see verbatim quote, supra]. This applies to the legislature as well as the judicial branch of our State government. In 12 Am. Jur. p. 283, §586 it is stated:
>
> 'The requirements of due process of law extend to every case of the exercise of governmental power. The limitations inherent in the requirements as to due process of law are binding equally on the United States and on the several states.
>
> "'A state may not by any of its agencies, legislative, judicial, or executive, disregard the constitutional prohibition. The inhibition includes all functionaries of state government, judicial as well as political.' . . ."

Judicial courts have noted the mixture of powers possessed by Texas commissioners courts. Some of those powers are legislative, while others are executive, administrative, or judicial. *Avery v. Midland County*, 390 U.S. 474, 88 S.Ct. 1114, 20 L.Ed 2d 45 (1968).

In its own opinion in *Avery*, 406 S.W.2d 422 (1966), the Texas Supreme Court observes, at 426:

> "The county is a subordinate and derivative branch of state government. . . . The appellation 'court' is a misnomer in the accepted meaning. . . . The primary function of the commissioners court is the administration of the business affairs of the county. . . . Its legislative functions are negligible and county government is not otherwise comparable

to the legislature of a state or to the federal Congress. . . ."

We conclude that while art. 5 §18 of the Constitution empowers the commissioners court to redistrict the county, the execution of that authority must accord due process to the incumbents whose elective offices may be abolished.

Every arm of government having the authority and power to implement its decisions by taking away vested property rights must adhere to a fundamental principle of justice. That is, those rights may not be prejudiced without first giving the owner of those rights due notice and an opportunity to defend his rights. *Masonic Grand Chap. of Order of East. Star v. Sweatt*, 329 S.W.2d 334 (Tex. Civ. App. — Fort Worth 1959, writ ref'd n.r.e).

Basic fairness and due process in this case would dictate notice to each duly elected and vested incumbent in advance of the hearings, informing of (a) the time, place and location of each hearing, (b) the specific subject matter to be considered, (c) the possibility that their vested offices may be terminated prematurely, (d) the absence of assurance that any incumbent would be allowed to retain office, (e) the possibility that none of the incumbents would be appointed to fill vacancies in offices for the new precincts, (f) the possibility that each would be denied the salary and benefits of office for the unexpired portion of his original term, and (g) the right to appear and defend their vested rights and to show cause why their offices should not be abolished prematurely without compensation. There is no evidence that such notice was given, either before or during any of the hearings.

A review of the evidence shows that the district attorney's office mailed letters to the appellees, informing

them that the commissioners court had scheduled public meetings at certain times and places to consider redistricting the appellees' precincts.

Testimony also shows that notice of each meeting's agenda was posted as required by TEX. REV. CIV. STAT. ANN. art. 6252-17 §3A (1970), commonly called the Open Meetings Act.

We hold that the letters and posted notices did not meet the requisites of due process to which the appellees were entitled.

In examining the record, this court finds no evidence that any appellee attending a hearing was there informed that he might neither be retained in office nor reappointed; nor that the contemplated action might take away the salary and benefits of office already vested.

The evidence shows that the hearings functioned as forums in which proposed geographic revisions of precinct lines were generally considered and evaluated. There is no evidence that any hearing functioned as a forum in which to take away permanently the elected office and vested property rights of any specific incumbent. After the final hearing, however, appellees vested rights were taken away by order of the appellant commissioners court.

Appellants' no evidence point required us to consider only the evidence supporting the trial court's finding as to lack of due process; and we must disregard all contrary evidence. *Glover v. Texas General Indemnity Co.*, 619 S.W.2d 400 (Tex. 1981); *Butler v. Hanson*, 455 S.W.2d 942 (Tex. 1970).

Having done so, we find there was evidence to support the finding that appellees did not receive due process.

Appellants' same point of error complains that the evidence was insufficient to find a lack of due process, and that such finding was against the great weight and preponderance of the evidence.

After considering all of the evidence, both that tending to prove, and that tending to disprove, adherence to due process, we conclude that the court's finding that the appellees were not accorded due process was correct.

There was sufficient evidence to support the finding, which was not contrary to the great weight and preponderance of the evidence in the record.

Appellants' first point of error is overruled.

In their second point, appellants assert as error the trial court's refusal to allow witness John L. Bean to testify relative to notice and substance of the meetings and attendance by the appellees.

Appellants, however, filed no bill of exceptions as provided in TEX. R. CIV. P. 372. In the absence of a bill of exceptions showing what the excluded testimony would have been, no reversible error is shown. *Muller v. Reeher*, 520 S.W.2d 599 (Tex. Civ. App. — Fort Worth 1975, no writ); *Phillips v. Phillips*, 511 S.W.2d 748 (Tex. Civ. App. — San Antonio 1974, no writ).

Appellants' second point of error is overruled.

Their third point asserts that, as a matter of law, the appellees are not entitled to damages. We cannot agree.

If we are to view art. 2351 1/2(c) as being compatible with our state constitution, we cannot construe the stat-

ute as indulging the divestment of constitutionally vested rights without just compensation.

We do not believe that art. 2351 1/2(c) sanctions using the vehicle of redistricting to take from public officials property rights that have already become vested for the duration of the terms to which the voters elected them.

An unbridled power to divest precinct officeholders in midterm "for convenience of the people" could invite political chicanery and undermine the electoral process and will of the voters. We cannot ascribe that intent or effect to art. 2351 1/2(c) or to art. 5, §18 of the Constitution.

The appellees did not seek to regain their offices which were abolished or are now held by others. They sought and were awarded compensation for the rights prematurely taken from them.

We hold that, having been duly elected and vested with a constitutional term of four years in office, each appellee is likewise vested with the right to receive the salary and benefits payable for the duration of the term to which he was elected. *McGuire v. Hughes, supra.* Accordingly, appellants' third point of error is overruled.

The fourth point is that the judgment's award of compensation to the appellees does not name a sum certain, and the appellant county cannot determine the extent of its liability.

As to the appellees who have not been reappointed to office, there was testimony as to the amount of salary and other compensatory benefits of the offices to which they were elected. That evidence is uncontroverted, and the fact and date of each appellee's election was stipulated by the parties.

In its judgment, the trial court found that appellees Ashmore, T. Sheffield, Blevins, Forbes, Stank, E. Sheffield, Gray and Richard Craig were those whose elected terms end December 31, 1982.

The judgment orders the appellant county to pay each of those appellees "his full salary and benefits including future cost of living increases afforded other County officeholders during the remaining two years of his term of office."

The judgment also provides that (a) any of those appellees who are reappointed to office but decline to serve will waive his right to compensation and (b) to any such appellee who is reappointed at a compensation less than that of his elected office, the county shall pay the difference.

The trial court found that appellees Bruce Lee, Perez, Robert Craig, Ferris, Meador, Patty, Daniel, Gorman, Howeth and C. Doyle Lee were those whose elected terms end on December 31, 1984.

The judgment orders the appellant county to pay each of those appellees "his full salary and benefits including future cost of living increases afforded other county officeholders for the four years to which he was elected to office."

As to the latter group of appellees, the judgment specifies the same waiver and differential provisions as for the first group.

However, as to each appellee whose elected term ends December 31, 1984, the judgment provides that if he runs for office in 1982, and is defeated, the county shall pay his "full salary and benefits and emoluments of office

for the remaining two years of the original four year term to which he was elected."

As to all appellees, the judgment orders that the salaries, benefits and emoluments shall be paid "in the same manner and at the same times that all other public officials of Tarrant County, Texas, are paid."

Taking into consideration, as we must, the pleadings, evidence and relationship of the parties, we hold that the judgment is sufficiently definite to constitute a final judgment and to enunciate the county's liability. *Ferguson v. Ferguson*, 338 S.W.2d 945 (Tex. 1960); *Thaxton v. Houston National Bank*, 439 S.W.2d 455 (Tex. Civ. App. — Houston [14th Dist.] 1969, no writ).

The fourth point of error is overruled, and judgment of the trial court is affirmed.

/s/ Dixon Holman,
Justice

MASSEY, C. J., SPURLOCK and HOLMAN, JJ.

APPENDIX "C"

IN THE SUPREME COURT OF TEXAS

No. C-985

TARRANT COUNTY ET AL.,
Petitioners

v.

BOB ASHMORE ET AL.,
Respondents

FROM TARRANT COUNTY,
SECOND DISTRICT.

Bob Ashmore and others, all Tarrant County justices of the peace and constables threatened with removal from office by the redrafting of precinct boundary lines, brought this action for damages and for declaratory and injunctive relief against the Tarrant County Commissioners Court. The claims asserted in the suit were based upon alleged violations of procedural due process, and upon the purported rights of duly elected officeholders to complete their full terms of office. In response to these claims, the commissioners argued that their actions were authorized by TEX. REV. CIV. STAT. ANN. art. 2351 1/2, which then allowed commissioners courts to declare certain offices abolished or vacated when precinct lines

were redrawn.[1] The trial court held that, while article 2351 1/2(c) was a constitutional means of removing officers from their positions, the procedures used by the Tarrant County Commissioners to accomplish that purpose in the present case were inconsistent with the officers' property rights and rights of due process. As a result, the court held, the officers were entitled to recover from the county the salaries and benefits they would have earned had they been allowed to remain in office for their full terms. The court of appeals affirmed the judgment of the trial court. 624 S.W.2d 740. We reverse the judgments of the courts below.

In the spring of 1980, the Commissioners Court of Tarrant County began the process of examining the justice and constable precincts in the county with a view toward complying with a federal district court redistricting order. *See Bagsby v. Moncrief*, No. CA-4-79-24k (N.D. Tex. 1979). The last redistricting of Tarrant County had taken place in 1876, and a wide disparity

[1]Article 2351 1/2 then provided:

(c) When boundaries of justice of the peace precincts are changed, so that existing precincts are altered, new precincts are formed, or former precincts are abolished, if only one previously elected or appointed justice of the peace or constable resides within a precinct as so changed, he shall continue in office as justice or constable of that precinct for the remainder of the term to which he was elected or appointed. If more than one justice or constable resides within a precinct as so changed, or if none resides therein, the office shall become vacant and the vacancy shall be filled as other vacancies; provided, however, that in precincts having two justices, if two reside therein, both shall continue in office, and if more than two reside therein, both offices shall become vacant.

This portion of the statute was deleted by recent amendment. *See* 1981 Tex. Gen. Laws, ch. 280, §1, at 748. Article 2351 1/2 now provides:

(b) When boundaries of commissioners or justice precincts are changed, the terms of office of the commissioners, justices of the peace, and constables then in office shall not be affected by such change, and each of them shall be entitled to serve for the remainder of the term to which he was elected even though the change in boundaries may have placed his residence outside of the precinct for which he was elected.

between precinct populations existed.[2] After receiving a proposed redistricting plan prepared by a demographic expert hired to study population trends in the county, the commissioners held five public hearings on consecutive nights in early August 1980 in order to solicit public comment. On August 25, the commissioners adopted the proposed plan, and concurrently ordered that all justice and constable precincts and each of the offices located therein be abolished effective January 1, 1981, so that the newly defined offices could be filled by appointment.

The present action was filed on December 16, 1980, by three justices of the peace and one constable seeking damages and injunctive and declaratory relief. Thereafter, on December 19, the trial court ordered the joinder of all other justices and constables in the county as involuntary plaintiffs.[3] Trial was held on December 30 and 31. While it was clear to the participants during trial that all justice and constable positions had been vacated, it was not certain at that time whether any incumbent or recently elected officer would be appointed to serve in any of the newly drawn precincts, since the commissioners court planned to make the appointments on the evening of December 31.

The trial court ruled on January 9, 1981, that article 2351 1/2 was constitutional, that the commissioners court had the power to redistrict and declare the offices of the justices and constables vacant, and that the vacancies could be filled by appointment. Notwithstanding the

[2]For example, the largest justice precinct in Tarrant County in 1977, precinct one, contained 402,730 persons; the smallest precinct, precinct eight, had a population of only 12,638.

[3]Of the ten justices in Tarrant County, eight were in office at the time of suit, with terms expiring December 31, 1982. Two justices had been elected in November 1980 but were not due to take office until January 1, 1981. All of the eight constables were to begin new terms on January 1, 1981.

finding of validity of article 2351 1/2, however, the court held that the officers had property rights in their offices and were deprived of such property rights by the commissioners court without just compensation or regard for due process. As a result, the court held, the justices and constables were entitled to full salary and benefits, including any future cost of living increases afforded other county officials, for the remainder of their elected terms.[4]

The court of appeals affirmed the judgment of the trial court. In so doing, the court agreed that the precinct officers had a property right in their offices and held that the redrafting of precinct boundaries must in all cases accord due process to the incumbents whose elective offices may be abolished. The court also held that, even if article 2351 1/2 was a valid and constitutional statute, it should not be construed as providing for the loss of a valuable property right — the right to complete an elected term of office — without just compensation. Recovery for lost salaries and benefits for the unexpired terms was therefore affirmed.

Taking of Property

We are aware that article I, section 17, of the Texas Constitution provides that "[n]o person's property shall be taken . . . without adequate compensation. . . ." Additionally, the fifth amendment to the United States Constitution, made applicable to the states by way of the fourteenth amendment, concludes with the words: "nor shall private property be taken for public use, without compensation." We agree that these provisions stand as

[4]The judgment provided that any officeholder appointed to the same or similar position who declined to serve would waive his rights to recovery. The record does not reveal what dispossessed officers, if any, were reappointed by the commissioners court.

a shield between the exercise of governmental power and the rights of all citizens to own and enjoy property. We do not agree with the court of appeals, however, that the public officers in the present case had a "property" interest in their positions such that vacating the offices prior to the end of their terms resulted in a constitutionally recognizable "taking" of property without compensation.

The nature of public office has long been a point of analysis and discussion in Texas. Early courts described the elected and appointed position as "the right, authority, and duty created and conferred by law by which, for a given period either fixed by law or enduring at the pleasure of the creating power, an individual is invested with some portion of the sovereign functions of the government to be exercised by him for the benefit of the public." *Kimbrough v. Barnett*, 93 Tex. 301, 310, 55 S.W. 120, 122 (1900), *quoted in Commissioners' Court of Limestone County v. Garrett*, 236 S.W. 970, 972 (Tex. Comm'n App. 1922, judgmt adopted). As the foregoing passage indicates, public offices began to be described properly by Texas courts not in terms of a "contract," "employment," "ownership," or "possession," but rather as a "trust," "duty," and "public benefit." In other words, stated briefly, public office came to be seen in Texas not as a *right*, but as a *responsibility*. In *State ex rel. Maxwell v. Crumbaugh*, 63 S.W. 925, 927 (Tex. Civ. App. — San Antonio 1901, writ ref'd), for example, the court stated:

> A public office is not "property," within the meaning of the constitutional provision that "no person shall be deprived of life, liberty or property without due process of law." It is a mere public agency, revocable according to the will and appointment of the people, as exercised in the constitution and the

> laws enacted in conformity therewith. Moore v. Strickling (W. Va.) 33 S.E. 274, 50 L.R.A. 279. In the case cited the court in its opinion makes . . . the following quotation: "It is impossible to conceive how, under our form of government, a person can own or have a title to a governmental office. Offices are created for the administration of public affairs. When a person is inducted into an office he thereby becomes empowered to exercise its powers and perform its duties, not for his, but for the public, benefit. It would be a misnomer and a perversion of terms to say that an incumbent owned an office or had any title to it."

It may be concluded, therefore, that a fundamental principle associated with our republican form of government is that every public officeholder remains in his position at the sufferance and for the benefit of the public, subject to removal from office by edict of the ballot box at the time of the next election, or before that time by any other constitutionally permissible means.

The decision in *State ex rel. Maxwell v. Crumbaugh, supra*, in declining to identify a public office as the "property" of the officeholder, is in line with the majority rule in other jurisdictions. *See* Annot., 172 A.L.R. 1366 (1948); 99 A.L.R. 336 (1935); 4 A.L.R. 205 (1919). In the early case of *Taylor v. Beckham*, 178 U.S. 548 (1900), the United States Supreme Court was asked to settle a contest over the offices of governor and lieutenant governor of the State of Kentucky. The defendant officeholders in that suit, who were the losers of an election contest conducted in the state's general assembly, sought to retain their positions by asserting a property right to the office and the benefits attached thereto. The Supreme Court responded negatively to this contention by stating:

> The view that public office is not property has been generally entertained in this country.
>
> * * * *
>
> The decisions are numerous to the effect that public offices are mere agencies or trusts, and not property as such. Nor are the salary and emoluments property, secured by contract, but compensation for services actually rendered. Nor does the fact that a constitution may forbid the legislature from abolishing a public office or diminishing the salary thereof during the term of the incumbent change its character or make it property. True, the restrictions limit the power of the legislature to deal with the office, but even such restrictions may be removed by constitutional amendment. In short, generally speaking, the nature of the relation of a public officer to the public is inconsistent with either a property or a contract right.

Id. at 576-77.

The holding of the Court in *Taylor* was subsequently reaffirmed in the case of *Cave v. Missouri ex rel. Newell*, 246 U.S. 650, (1918) (per curiam), and again in *Snowden v. Hughes*, 321 U.S. 1, 7 (1944).

In *Edge v. Holcombe*, 135 Ga. 765, 70 S.E. 644 (1911), the Supreme Court of Georgia reiterated the majority position expressed by the United States Supreme Court:

> We will only observe that a careful study of the cases discloses that in the early history of the English jurisprudence the right to hold office was regarded as a property right, and many decisions were made in recognition of this principle; but the American courts now uniformly hold that an office,

> relatively [sic] to the government, is a public trust, and not a property right. Where an office is created by the Legislature, the power which created it may fix its term and provide for the sooner determination thereof, and the officer takes the office with this limitation.

Similarly, in *Smith v. Thomson*, 219 Iowa 888, 258 N.W. 190, 193 (1934), the court stated:

> [I]t must be conceded, as a general rule, that the relation between a public officer and the people is not in the nature of a contract, and that such office has in it no element of property. It is a public trust, created for the benefit of the state, and not for the benefit of the individual citizens thereof, and the prospective emoluments of a public office are not property in any sense.

The same rule has been repeated many times in many jurisdictions. *See, e.g., Cosby v. Moore*, 259 Ala. 41, 65 So. 2d 178, 181 (1953); *Trimble v. People*, 19 Colo. 187, 34 P. 981 (1893); *Kirkpatrick v. King*, 228 Ind. 236, 91 N.E.2d 785, 788-89 (1950); *Lanza v. Wagner*, 11 N.Y.2d 317, 229 N.Y.S.2d 380, 183 N.E.2d 670, 673 (1962); *Simmons v. Elizabeth City*, 197 N.C. 404, 149 S.E. 375, 376 (1929); *Wright v. City of Florence*, 229 S.C. 419, 93 S.E.2d 215, 220 (1956).

Our holding in this case should not be construed to mean that an officer, duly elected and inducted into his position for a definite term, has no financial or "property" interest that may be protected against interference by others not acting under statutory or constitutional authority. *See Walton v. Davis*, 188 Ga. 56, 2 S.E.2d 603, 604 (1939); *State ex rel. Ryan v. Norby*, 118 Mont. 283,

165 P.2d 302, 304 (1946). As stated in *Sutton v. Adams*, 180 Ga. 48, 178 S.E. 365, 375 (1934): "While an officer has no vested right in the office held by him, and thus cannot complain of an abolishment of such office, or of his removal or suspension, according to law, . . . it does not follow that he has absolutely no financial or property interest which may be protected by a court of equity as against one who otherwise and by private means seeks to interfere with his possession and conduct of such office during his incumbency therein." *See also Carver v. Wheeler County*, 200 S.W. 537, 538 (Tex. Civ. App. — Amarillo 1918, no writ). *Cf. Taylor v. Nealon*, 132 Tex. 60, 120 S.W.2d 586 (1938) (election contest between rival candidates); *State ex rel. Jennet v. Owens*, 63 Tex. 261 (1885) (same). What we do hold is that the qualified interest held by a public officer is not "property" within the sense of constitutional guarantees against governmental takings of property without compensation. *See Myers v. Tunks*, 360 S.W.2d 518, 520 (Tex. 1962). Absent a recognizable property interest, the officers have no claim for salaries for the unserved portion of their terms. *See generally Bennett v. City of Longview*, 268 S.W. 786 (Tex. Civ. App. — Texarkana 1925, writ ref'd n.r.e.); *State ex rel. Dowlen v. Rigsby*, 43 S.W. 271 (Tex. Civ. App.), *writ ref'd per curiam*, 91 Tex. 351, 43 S.W. 1101 (1897).

Procedural Due Process

The officeholders claim, and the court of appeals held, that salaries for unexpired terms should be recoverable in this case because the procedures employed to vacate the precinct positions did not conform with minimum requirements of due process. According to the court of appeals, procedural due process in such cases calls for notice in advance of hearing informing the incumbents of

(1) the time, place, and location of each hearing; (2) the subject matter to be considered; (3) the possibility of termination of positions prior to expiration of terms; (4) the possibility that no incumbents would be reappointed to the new positions; (5) the possibility that present salaries would not be continued; and (6) the existence of the right to appear and defend rights and to show cause why the offices should not be terminated without compensation. 624 S.W.2d at 744. The court concluded upon review of the record that such due process requirements had not been met in the present case.

The requirements of procedural due process apply only to the threatened deprivation of liberty and property interests deserving the protection of the federal and state constitutions. *Board of Regents v. Roth*, 408 U.S. 564, 569 (1972). Therefore, any assessment of proper procedural safeguards necessarily begins with a consideration whether the particular interest at stake is a protectible interest. In the present case, we acknowledge that an officer's interest in his elected position, though not "property" in the conventional sense, is a recognizable interest for purposes of procedural due process analysis. *See Ridgway v. City of Fort Worth*, 243 S.W. 740, 745 (Tex. Civ. App. — Fort Worth 1922, writ dism'd); *Paris v. Cabiness*, 98 S.W. 925, 927 (Tex. Civ. App. 1906, no writ). *See also Howard v. Bell County Board of Education*, 247 Ky. 586, 57 S.W.2d 466, 467 (1933). This view is consistent with recent United States Supreme Court pronouncements that procedural due process protection extends well beyond traditional concepts of ownership and title to encompass anything to which a person may assert a legitimate claim of entitlement. *Board of Regents v. Roth*, *supra* at 572, 577.

To say that an interest deserves due process protection does not define the amount of process that is due in a given instance. At a very basic level, deprivation of a protected interest requires notice and an opportunity to be heard.[5] The type of notice and hearing required varies according to the facts of the situation. *Bell v. Burson*, 402 U.S. 535, 540 (1971). It is incorrect to state that the full procedural protections afforded in a criminal trial proceeding are required every time there is a right to a hearing. *Cafeteria & Restaurant Workers Union v. McElroy*, 367 U.S 886, 894 (1961); *Robison v. Wichita Falls & North Texas Community Action Corp.*, 507 F.2d 245, 252 (5th Cir. 1975).

In his treatise on administrative law, Professor Kenneth Davis attempted to clarify the confusion surrounding notice and hearing requirements by drawing a distinction between determinations of "adjudicative" and "legislative" facts. K. DAVIS, ADMINISTRATIVE LAW TREATISE §§ 12:1-12:8 (2d ed. 1979). Under this dichotomy, the "adjudicative" facts, those that answer the questions of "who did what, where, when, how, why, with what motive or intent," are the types of facts that usually demand a trial-type proceeding complete with full procedural safeguards — service of citation, compulsion and cross examination of witnesses, and reliance upon a disinterested trier of fact. DAVIS, *supra* at 12:3. "Legislative" facts, on the other hand, deal with matters

[5] "Many controversies have raged about the cryptic and abstract words of the Due Process Clause but there can be no doubt that at a minimum they require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case." Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 313 (1950).

of policy and administrative discretion, and affect individual parties to a dispute only to the extent that those parties are involved in the overall legislative scheme. *Id.* Determinations of such fact issues generally may be made without demands for an adversarial setting, *Bi-Metallic Investment Co. v. State Board of Equalization of Colorado*, 239 U.S. 441, 445 (1915); *SEC v. Frank*, 388 F.2d 486, 491-92 (2d Cir. 1968); *Jackson County Public Water Supply District v. State Highway Commission*, 365 S.W.2d 553, 559 (Mo. 1963), although an opportunity for open and public debate in a speechmaking or public meeting-type hearing or in a notice and comment procedure is probably appropriate if not essential. *Londoner v. Denver*, 210 U.S. 373 (1908); DAVIS, *supra* at § 12:5.

In applying these principles to the instant case, we note that commissioners courts in various counties of Texas are given authority to divide the counties into precincts and to revise those precincts "from time to time, for the convenience of the people." TEX. CONST. art. V, § 18. Furthermore, as we noted previously, the commissioners had at the time of this suit statutory authority under article 2351 1/2 to abolish offices and declare vacancies incident to the redrafting of boundary lines. Assuming the validity of article 2351 1/2, and given the constitutional provision, the Tarrant County Commissioners Court received a grant of power from the people of the state and from the legislature to perform the action here complained of. As such, the redistricting may been seen as the exercise of legislative or quasi-legislative power leading to the resolution of essentially political issues. We cannot conclude that the officers involved in this suit were wrongfully deprived of a trial-

type adjudication of relevant facts, since there were no adjudicative facts to be determined.[6]

Examination of the record in this case leads us to conclude that, given the circumstances of the case and the issues to be decided, the officeholders received as much protection as they were due. The court of appeals acknowledged in its opinion that the district attorney's office mailed letters to the officers informing them that the commissioners court had scheduled public meetings to consider redistricting the officers' precincts, and that notice of the meetings was also posted in compliance with the requirements of the Open Meetings Act, TEX. REV. CIV. STAT. ANN. art. 6252-17 § 3A. In addition, the record reveals that the officers did, in fact, know about the hearings; that they knew what the hearings were for; that each officer attended at least one meeting, some accompanied by their attorneys; and that each officer was given the opportunity at the meetings to make comment and inquiry. There was considerable discussion, and at least one officer did exercise his right to speak. While we do not hold or imply that the officeholders whose positions were terminated had no right to notice

[6]A different situation would have existed, of course, and a more sophisticated adjudication procedure would have been required, had the commissioners sought to remove any of the officers for causes such as incompetence or malfeasance. In such cases, due process would accord the officer an opportunity to refute the charge in a trial-type hearing in order to protect his "good name, reputation, honor, or integrity." Board of Regents v. Roth, *supra* at 573; Cafeteria & Restaurant Workers Union v. McElroy, *supra* at 898; Wieman v. Updegraff, 344 U.S. 183, 190-91 (1952). Additionally, the issues of incompetence and malfeasance would constitute adjudicative facts determinable only in an adversarial setting, and not in a legislative forum. DAVIS, *supra* at § 12:3-12:4. In the present case, there was no suggestion of removal of the officers for "cause"; rather, the discretionary action was taken pursuant to the statutory and constitutional authority. The only factual issue arguably involved in the process was whether the redistricting plan was consistent with the "convenience of the people," although this question was itself essentially a matter of policy.

of the proceedings, or that the redistricting determinations could have been made in secret without invited comment from the public or the officers, we do hold that the attempts made to involve all interested parties in the legislative process in this case were adequate. We therefore render judgment that the respondents take nothing.

Jack Pope
Justice

OPINION DELIVERED:
June 23, 1982

APPENDIX "D"

CHIEF JUSTICE
JOE R. GREENHILL

JUSTICES
JACK POPE
SEARS McGEE
CHARLES W. BARROW
ROBERT M. CAMPBELL
FRANKLIN S. SPEARS
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July 21, 1982

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Dear Sirs:

The motion for rehearing in the case of TARRANT COUNTY ET AL. vs. BOB ASHMORE ET AL., No. C-985, was this day overruled.

Very truly yours,

/s/ Garson R. Jackson, Clerk

Office - Supreme Court, U.S.
FILED
NOV 15 1982
ALEXANDER L. STEVAS
CLERK

No. 82-582

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

BOB ASHMORE, T. M. SHEFFIELD, BRUCE LEE, BOBBY O. BLEVINS, HERMAN DANIELS, FLOYD GRAY and JIM FERRIS, *Petitioners*

vs.

TARRANT COUNTY and COMMISSIONERS' COURT OF TARRANT COUNTY, TEXAS
MIKE MONCRIEF, County Judge
R. T. "DICK" ANDERSEN, County Commissioner
R. L. "JERRY" MEBUS, County Commissioner
A. LYN GREGORY, County Commissioner
B. D. GRIFFIN, County Commissioner
Respondents

On Petition for a Writ of Certiorari to the Supreme Court of Texas

Respondents' Brief in Opposition

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No. 82-582

IN THE

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OCTOBER TERM 1982

BOB ASHMORE, T. M. SHEFFIELD, BRUCE LEE, BOBBY O. BLEVINS, HERMAN DANIELS, FLOYD GRAY and JIM FERRIS, *Petitioners*

vs.

TARRANT COUNTY AND COMMISSIONERS' COURT OF TARRANT COUNTY, TEXAS MIKE MONCRIEF, County Judge, R. T. "DICK" ANDERSEN, County Commissioner, R. L. "JERRY" MEBUS, County Commissioner, A. LYN GREGORY, County Commissioner, B. D. GRIFFIN, County Commissioner, *Respondents*

Respondents' Brief in Opposition

TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

Respondents Tarrant County, Commissioners' Court of Tarrant County, Texas, Mike Moncrief, County Judge, R. T. "Dick" Andersen, R. L. "Jerry" Mebus, A. Lyn Gregory, and B. D. Griffin, County Commissioners of Tarrant County respectfully request that this Court deny the Petition for Writ of Certiorari to the Supreme Court of Texas and in support of such request would show as follows:

STATEMENT OF THE CASE
FACTS

Respondents set forth the salient facts of this case which were entirely omitted from the Petition for Writ of Certiorari.

Petitioners Ashmore, Sheffield, Blevins, and Gray were each Justices of the Peace in Tarrant County, Texas who were elected to office at the general election in 1978 for terms commencing on January 1, 1979. Petitioners Lee, Daniels, and Ferris were elected to the office of Constable within their respective precincts in Tarrant County at the general election held in November of 1980. Their terms of office were to commence on January 1, 1981. Under the provisions of Article V § 18 of the Texas Constitution the terms of office for Justices of the Peace and Constables are set at four years.

On August 25, 1980 the Respondent Commissioners' Court of Tarrant County exercised the power granted to it under the terms of Article V, § 18 of the Texas Constitution and abolished the then existing Justice Precincts of Tarrant County and each office therein. The abolition was ordered to become effective on January 1, 1981. By separate order of the Commissioners' Court new Justice Precincts were established and defined effective January 1, 1981.

The orders entered on August 25, 1980 were the culmination of months of study and preparation by the Commissioners' Court in their effort to create a Justice Precinct in Tarrant County in which the black citizens of Tarrant County would have a meaningful opportunity to elect officers of their choice. The basic format for the Justice Precincts of Tarrant County had been set in 1876 and

had remained largely unchanged for 104 years. As a result of the static nature of the Justice Precincts an enormous population imbalance existed in the precincts in 1980. The largest of the eight precincts had a population of over 400,000. The smallest precinct contained only 12,000 persons.

In July of 1980, the Respondent Commissioners' Court scheduled five public hearings for the purpose of receiving and explaining the final report and recommendation of Dr. John Bean, a demographic expert hired by the Respondents to assist in the reapportionment of the Justice Precincts. Each Petitioner was mailed a copy of this schedule showing the time, place and date of each meeting. The notices sent to Petitioners advised that no action would be taken until the sixth scheduled meeting of August 25, 1980. The first five meetings were scheduled for August 4-8, 1980. Each Petitioner attended at least one of these meetings, in some cases they were represented by counsel. Each Petitioner was given the opportunity to address the Commissioners' Court at any meeting and to present to that Court whatever comments, argument, or evidence that the Petitioner deemed appropriate.

Thereafter, the August 25, 1980 orders of the Commissioners' Court were submitted to the Attorney General of the United States for review under the Voting Rights Act. In early December 1980, the Attorney General advised that no objection would be interposed. Shortly after receipt of such notice the instant action was filed.

REASONS WHY THE WRIT SHOULD BE DENIED

1. THE DECISION OF THE SUPREME COURT OF TEXAS IS NOT IN CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT ON A FEDERAL QUESTION

The Supreme Court of Texas held that the interest of the Petitioners in their respective offices was a qualified interest and was "not 'property' within the sense of the constitutional guarantees against governmental takings of property without compensation." *Tarrant County v. Ashmore*, 635 S.W.2d 417,422 (Tex. 1982). The Texas court further recognized that though this interest was not "property" it was a sufficient interest to invoke the protection of procedural due process. *Id. ai 422.* After consideration of the salient facts, the Texas court held that the procedures employed in the instant case were sufficient to satisfy the requirements of due process. The Petitioners assertion that the Supreme Court of Texas held that they "did not have a property right protected by due process in the offices to which they were elected" is a grossly inaccurate characterization of the decision below.

The decision of the Supreme Court of Texas is consistent with the decisions of this Court. That a public office is a public trust and not property is clear from this Court's holdings in *Higginbotham v. City of Baton Rouge*, 306 U.S. 535 (1939); *Taylor v. Beckham*, 178 U.S. 548 (1900); *Cave v. Missouri ex rel. Newell*, 246 U.S. 650 (1918); and *Snowden v. Hughes*, 321 U.S. 1 (1944). The Supreme Court of Texas recognized the teachings of *Board of Regents v. Roth*, 408 U.S. 564 (1972) and its progeny that the Petitioners offices could not be abolished without procedural safeguards.

The Petitioners interest in their continuation in office is nothing more than an unilateral expectation there will be no changes made in the Justice Precincts and offices. As the final arbiter of Texas law, the Supreme Court of Texas acknowledged and reaffirmed the established law of the state that the Commissioners' Courts of Texas are empowered by the constitution and laws of Texas to alter or abolish Justice Precincts and offices "from time to time, for the convenience of the people." *Tarrant County v. Ashmore, supra*, at 423; *State ex rel Dowlen v. Rigsby*, 17 Tex. Civ. App. 171, 43 S.W. 271, *writ ref'd per curiam* 43 S.W. 1101 (1897).

The abolition of the Petitioners' offices did not reflect adversely upon the Petitioners' individual character or abilities. Abolition did not carry with it the subjection of Petitioners to embarrassment, shame or humiliation. Under such circumstances the full panoply of due process safeguards afforded in criminal trials or "name clearing" hearings is not required. *Board of Regents v. Roth, supra; Arnett v. Kennedy*, 416 U.S. 134 (1974). The Petitioners were entitled to, and received, notice and an opportunity to be heard. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306,313 (1950).

CONCLUSION

The Petition for Writ of Certiorari to the Supreme Court of Texas should be denied.

Respectfully submitted,

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Attorneys for Respondents

CERTIFICATE OF SERVICE

I certify that three true and correct copies of the foregoing Brief in Opposition has been this day served upon Mr. Jim Claunch, Attorney for Petitioners by delivering the same via United States Certified Mail, return receipt requested, postage prepaid, addressed as follows:

Mr. Jim Claunch
817 Penn Street
Fort Worth, Texas 76102

Dated this ____ day of November, 1982.

FREDERICK M. SCHATTMAN